

Introduced by Senator MorrowFebruary 21, 2002

An act to amend Sections 7401, 8101, 60100, 60101, 60108, and 60501 of, and to add Section 7403.5 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1608, as introduced, Morrow. Fuel taxes: emergency service providers.

The Motor Vehicle Fuel Tax Law and the Diesel Fuel Tax Law impose, among other things, a specified backup tax in connection with each gallon of fuel sold and provide certain exemptions therefrom.

This bill would, under both laws, also provide an exemption for local emergency service providers, and would make related and conforming changes.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 7401 of the Revenue and Taxation Code
- 2 is amended to read:
- 3 7401. (a) The provisions of this part requiring the payment of
- 4 motor vehicle fuel taxes do not apply to any of the following:
- 5 (1) Any entry or removal from a terminal or refinery of motor
- 6 vehicle fuel transferred in bulk to a refinery or terminal if the
- 7 persons involved (including the terminal operator) are licensed
- 8 suppliers.



1 (2) The removal of motor vehicle fuel, if all of the following
2 apply:

3 (A) The motor vehicle fuel is removed by railroad car from an
4 approved refinery and is received at an approved terminal.

5 (B) The refinery and the terminal are operated by the same
6 licensed supplier.

7 (C) The refinery is not served by pipeline (other than a pipeline
8 for the receipt of crude oil) or vessel.

9 (3) Motor vehicle fuel which, pursuant to the contract of sale,
10 is required to be shipped and is shipped to a point outside of this
11 state by a supplier by means of any of the following:

12 (A) Facilities operated by the supplier.

13 (B) Delivery by the supplier to a carrier, customs broker, or
14 forwarding agency, whether hired by the purchaser or not, for
15 shipment to the out-of-state point.

16 (C) Delivery by the supplier to any vessel clearing from a port
17 of this state for a port outside of this state and actually exported
18 from this state in the vessel.

19 (4) Motor vehicle fuel sold by credit card certified by the
20 United States Department of State to any consulate officer or
21 consulate employee of a foreign government who is not engaged
22 in any private occupation for gain within this state, who uses the
23 motor vehicle fuel in a motor vehicle that is registered with the
24 United States Department of State, and whose government has
25 done either of the following:

26 (A) Entered into a treaty with the United States providing for
27 the exemption of its representatives from national, state, and
28 municipal taxes.

29 (B) Granted a similar exemption to representatives of the
30 United States.

31 (5) Motor vehicle fuel sold to the United States armed forces
32 for use in ships or aircraft, or for use outside this state.

33 (6) Gasoline blendstocks removed from a pipeline or vessel,
34 when the gasoline blendstocks are received by a licensed industrial
35 user.

36 (7) Any entry or removal from a terminal or refinery of
37 gasoline blendstocks that are received at an approved terminal or
38 refinery if the person otherwise liable for the tax is a licensed
39 supplier.



(8) Any entry or removal from a terminal or refinery of gasoline blendstocks not in connection with a sale if the person otherwise liable for the tax is a licensed supplier and the person does not use the gasoline blendstocks to produce finished gasoline.

(9) Any entry or removal from a terminal or refinery of gasoline blendstocks in connection with a sale if the person otherwise liable for the tax is a licensed supplier and at the time of sale, such person has an unexpired exemption certificate described in Section 7402 from the buyer and has no reason to believe any information in the certificate is false.

(10) If paragraph (8) or (9) applied to the removal or entry of gasoline blendstocks, any resale made of gasoline blendstocks, when the person has an unexpired exemption certificate described in Section 7402 from the buyer and has no reason to believe any information in the certificate is false.

(11) Motor vehicle fuel sold by a supplier to a train operator for use in a motor vehicle fuel-powered train or for other off-highway use and the supplier has on hand an exemption certificate described in Section 7403 from the train operator.

(12) *Backup tax does not apply to delivery of motor vehicle fuel into the fuel tank of a motor vehicle fuel-powered highway vehicle as provided in Section 7364 for use by a local emergency service provider.*

(b) For purposes of this section:

(1) “Carrier” means a person or firm engaged in the business of transporting for compensation property owned by other persons, and includes both common and contract carriers.

(2) “Forwarding agent” means a person or firm engaged in the business of preparing property for shipment or arranging for its shipment.

SEC. 2. Section 7403.5 is added to the Revenue and Taxation Code, to read:

7403.5. (a) The certificate to be provided by a local emergency service provider consists of a statement that is signed under penalties of perjury by a person with authority to bind the buyer. A new certificate must be given if any information in the current certificate changes. The certificate may be included as part of any business records normally used to document a sale.

(b) An exemption certificate for motor vehicle fuel used in a motor vehicle fuel-powered highway vehicle for use by a local

1 emergency service provider shall contain that information and be
2 in the form as the board may prescribe.

3 SEC. 3. Section 8101 of the Revenue and Taxation Code is
4 amended to read:

5 8101. The following persons who have paid a tax for motor
6 vehicle fuel, either directly or to the vendor from whom it was
7 purchased, or indirectly by the adding of the amount of the tax to
8 the price of the fuel, shall, except as otherwise provided in this part,
9 be reimbursed and repaid the amount of the tax:

10 (a) Any person who buys and uses the motor vehicle fuel for
11 purposes other than operating motor vehicles upon the public
12 highways of the state, except vehicles subject to identification
13 under Division 16.5 (commencing with Section 38000) of the
14 Vehicle Code, which are used for recreational purposes or are
15 rented or leased for recreational purposes, and, on and after July
16 1, 1974, except motor vehicles subject to registration under
17 Division 3 (commencing with Section 4000) of the Vehicle Code
18 while engaged in off-highway recreational use.

19 (b) Any person who exports the motor vehicle fuel for use
20 outside of this state. Motor vehicle fuel carried from this state in
21 the fuel tank of a motor vehicle or aircraft is not deemed to be
22 exported from this state unless the motor vehicle fuel becomes
23 subject to tax as an “import” under the laws of the destination
24 state.

25 (c) Any person who sells the motor vehicle fuel to the armed
26 forces of the United States for use in ships or aircraft or for use
27 outside this state, under circumstances that would have entitled
28 him or her to an exemption from the payment of the tax under
29 Section 7401 had he or she been the supplier of this fuel.

30 (d) Any person who buys and uses the motor vehicle fuel in any
31 construction equipment which is exempt from vehicle registration
32 pursuant to the Vehicle Code, while operated within the confines
33 and limits of a construction project.

34 (e) Any supplier who sells motor vehicle fuel which is sold to
35 any consulate officer or consulate employee under circumstances
36 which would have entitled the supplier to an exemption under
37 paragraph (4) of subdivision (a) of Section 7401 if the supplier had
38 sold the motor vehicle fuel directly to the consulate officer or
39 consulate employee.



(f) Any supplier who removes motor vehicle fuel at a rack and pays tax on that removal or who purchases tax-paid motor vehicle fuel outside the bulk transfer/terminal system and then delivers the tax-paid motor vehicle fuel to another approved terminal from which that supplier subsequently removes the tax-paid motor vehicle fuel at the terminal rack, but only to the extent that the supplier can show that tax on the same amount of motor vehicle fuel has been paid more than one time by the same supplier.

(g) Any supplier who purchases tax-paid motor vehicle fuel in the bulk transfer/terminal system and subsequently removes the tax-paid motor vehicle fuel at the terminal rack, but only to the extent that the supplier can show that tax on the same amount of motor vehicle fuel has been paid more than one time by the same supplier. This subdivision applies only to those purchases made on or after January 1, 2002.

(h) Any person who buys and uses the motor vehicle fuel in any highway vehicle owned and operated by a local emergency service provider.

SEC. 4. Section 60100 of the Revenue and Taxation Code is amended to read:

60100. (a) The provisions of this part requiring the payment of taxes do not apply to any of the following:

(1) The removal from a terminal or refinery of, or the entry or sale of, any diesel fuel if all of the following apply:

(A) The person otherwise liable for tax is a diesel fuel registrant.

(B) In the case of a removal from a terminal, the terminal is an approved terminal.

(C) The diesel fuel satisfies the dyeing and marking requirements of Section 60101.

(2) Any entry or removal from a terminal or refinery of taxable diesel fuel transferred in bulk to a refinery or terminal if the persons involved (including the terminal operator) are registered.

(3) The removal of diesel fuel if all of the following apply:

(A) The diesel fuel is removed by railroad car from an approved refinery and is received at an approved terminal.

(B) The refinery and the terminal are operated by the same diesel fuel registrant.

(C) The refinery is not served by pipeline (other than a pipeline for the receipt of crude oil) or vessel.

- 1 (4) Diesel fuel which, pursuant to the contract of sale, is
2 required to be shipped and is shipped to a point outside of this state
3 by a supplier by means of any of the following:
- 4 (A) Facilities operated by the supplier.
 - 5 (B) Delivery by the supplier to a carrier, customs broker, or
6 forwarding agent, whether hired by the purchaser or not, for
7 shipment to the out-of-state point.
 - 8 (C) Delivery by the supplier to any vessel clearing from a port
9 of this state for a port outside of this state and actually exported
10 from this state in the vessel.
- 11 (5) Backup tax does not apply to delivery of diesel fuel into the
12 fuel tank of a diesel-powered highway vehicle as provided in
13 Section 60058 for any of the following:
- 14 (A) Use on a farm for farming purposes.
 - 15 (B) Use in an exempt bus operation.
 - 16 (C) Use in a diesel-powered highway vehicle that is operated
17 off the highway.
 - 18 (D) Use in a diesel-powered highway vehicle that is owned and
19 operated by a government entity.
 - 20 (E) Use by the United States and its agencies and
21 instrumentalities.
 - 22 (F) *Use by a local emergency service provider.*
- 23 (6) Diesel fuel sold by credit card certified by the United States
24 Department of State to any consulate officer or consulate
25 employee of a foreign government who is not engaged in any
26 private occupation for gain within this state, who uses the diesel
27 fuel in a motor vehicle which is registered with the United States
28 Department of State, and whose government has done either of the
29 following:
- 30 (A) Entered into a treaty with the United States providing for
31 the exemption of its representatives from national, state, and
32 municipal taxes.
 - 33 (B) Granted a similar exemption to representatives of the
34 United States.
- 35 (7) Diesel fuel sold by a supplier to a train operator for use in
36 a diesel-powered train or for other off-highway use and the
37 supplier has on hand an exemption certificate from the train
38 operator.
- 39 (8) Diesel fuel sold by a supplier to the United States and its
40 agencies and instrumentalities.



(b) For purposes of this section:

(1) “Carrier” means a person or firm engaged in the business of transporting for compensation property owned by other persons, and includes both common and contract carriers.

(2) “Forwarding agent” means a person or firm engaged in the business of preparing property for shipment or arranging for its shipment.

SEC. 5. Section 60101 of the Revenue and Taxation Code is amended to read:

60101. (a) Diesel fuel that is required to be dyed satisfies the dyeing requirement of this part if it meets the dyeing requirements of the United States Environmental Protection Agency and the Internal Revenue Service, including, but not limited to, requirements respecting type, dosage, and timing.

(b) Marking shall meet the marking requirements of the Internal Revenue Service.

(c) No person shall operate or maintain a motor vehicle on any public highway in this state with dyed diesel fuel in the fuel supply tank. This subdivision does not apply to uses of dyed diesel fuel on the highway that are lawful under the Internal Revenue Code or regulations promulgated thereunder, if the person is registered as a qualified highway vehicle operator, exempt bus operator, or government entity, or if the person is an intercity bus operator, as defined in Section 60046, who is registered as an interstate user under this part, *or to a local emergency service provider*.

SEC. 6. Section 60108 of the Revenue and Taxation Code is amended to read:

60108. (a) Notwithstanding the exemption provided for in subparagraph (D) of paragraph (5) of subdivision (a) of Section 60100, any government entity using diesel fuel exempt from tax under subparagraph (D) of paragraph (5) of subdivision (a) of Section 60100 shall, for the privilege of operating diesel-powered highway vehicles on highways in this state, make a payment equal to the tax specified in Section 60050 for each gallon of exempt diesel fuel used. The payments required by this subdivision shall be paid to the State Board of Equalization in the manner prescribed by the board, and the payments shall be treated as a tax for all purposes of this part.

(b) *This section does not apply to a local emergency service provider.*

1 SEC. 7. Section 60501 of the Revenue and Taxation Code is
2 amended to read:

3 60501. Persons who have paid a tax for diesel fuel lost, sold,
4 or removed as provided in paragraph (4) of subdivision (a), or used
5 in a nontaxable use, other than on a farm for farming purposes or
6 in an exempt bus operation, shall, except as otherwise provided in
7 this part, be reimbursed and repaid the amount of the tax.

8 (a) A claim for refund with respect to diesel fuel is allowed
9 under this section only if all of the following apply:

10 (1) Tax was imposed on the diesel fuel to which the claim
11 relates.

12 (2) The claimant bought or produced the diesel fuel and did not
13 sell or resell it in this state except as provided in paragraph (4) of
14 subdivision (a).

15 (3) The claimant has filed a timely claim for refund that
16 contains the information required under subdivision (b) and the
17 claim is supported by the original invoice showing the purchase.
18 If no original invoice was created, electronic invoicing shall be
19 accepted as reflected by a computerized facsimile when
20 accompanied by an original copy of the bill of lading or fuel
21 manifest that can be directly tied to the electronic invoice.

22 (4) The diesel fuel was any of the following:

23 (A) Used for purposes other than operating motor vehicles
24 upon the public highways of the state.

25 (B) Exported for use outside of this state. Diesel fuel carried
26 from this state in the fuel tank of a motor vehicle is not deemed to
27 be exported from this state unless the diesel fuel becomes subject
28 to tax as an import under the laws of the destination state.

29 (C) Used in any construction equipment that is exempt from
30 vehicle registration pursuant to the Vehicle Code, while operated
31 within the confines and limits of a construction project.

32 (D) Used in the operation of a motor vehicle on any highway
33 that is under the jurisdiction of the United States Department of
34 Agriculture and with respect to the use of the highway the claimant
35 pays, or contributes to, the cost of construction or maintenance
36 thereof pursuant to an agreement with, or permission of, the
37 United States Department of Agriculture.

38 (E) Used in any motor vehicle owned by any county, city and
39 county, city, district, or other political subdivision or public
40 agency when operated by it over any highway constructed and

1 maintained by the United States or any department or agency
2 thereof within a military reservation in this state. If the motor
3 vehicle is operated both over the highway and over a public
4 highway outside the military reservation in a continuous trip the
5 tax shall not be refunded as to that portion of the diesel fuel used
6 to operate the vehicle over the public highway outside the military
7 reservation.

8 Nothing contained in this section shall be construed as a refund
9 of the tax for the use of diesel fuel in any motor vehicle operated
10 upon a public highway within a military reservation, which
11 highway is constructed or maintained by this state or any political
12 subdivision thereof.

13 As used in this section, “military reservation” includes any
14 establishment of the United States government or any agency
15 thereof used by the armed forces of the United States for military,
16 air, or naval operations, including research projects.

17 (F) Sold by a supplier to any consulate officer or consulate
18 employee under circumstances which would have entitled the
19 supplier to an exemption under paragraph (6) of subdivision (a) of
20 Section 60100 if the supplier had sold the diesel fuel directly to the
21 consulate officer or consulate employee.

22 (G) Lost in the ordinary course of handling, transportation, or
23 storage.

24 (H) Sold by a person to the United States and its agencies and
25 instrumentalities under circumstances that would have entitled
26 that person to an exemption from the payment of diesel fuel tax
27 under Section 60100 had that person been the supplier of this
28 diesel fuel.

29 (I) Sold by a person to a train operator for use in a
30 diesel-powered train or for other off-highway use under
31 circumstances that would have entitled that person to an
32 exemption from the payment of diesel fuel tax under Section
33 60100 had that person been the supplier of this diesel fuel.

34 (J) Removed from an approved terminal at the terminal rack,
35 but only to the extent that the supplier can show that the tax on the
36 same amount of diesel fuel has been paid more than one time by
37 the same supplier.

38 (K) *Delivered into the fuel tank of a motor vehicle for use by a*
39 *local emergency service provider.*

(b) Each claim for refund under this section shall contain the following information with respect to all of the diesel fuel covered by the claim:

(1) The name, address, telephone number, and permit number of the person that sold the diesel fuel to the claimant and the date of the purchase.

(2) A statement by the claimant that the diesel fuel covered by the claim did not contain visible evidence of dye.

(3) A statement, which may appear on the invoice or similar document, by the person that sold the diesel fuel to the claimant that the diesel fuel sold did not contain visible evidence of dye.

(4) The total amount of diesel fuel covered by the claim.

(5) The use made of the diesel fuel covered by the claim described by reference to specific categories listed in paragraph (4) of subdivision (a).

(6) If the diesel fuel covered by the claim was exported, a statement that the claimant has the proof of exportation.

(c) Each claim for refund under this section shall be made on a form prescribed by the board and shall be filed for a calendar year. If, at the close of any of the first three quarters of the calendar year, more than seven hundred fifty dollars (\$750) is refundable under this section with respect to diesel fuel used or exported during that quarter or any prior quarter during the calendar year, and for which no other claim has been filed, a claim may be filed for the quarterly period. To facilitate the administration of this section, the board may require the filing of claims for refund for other than yearly periods.

SEC. 8. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.